Sections 201 and 332 of the Communications Act.[59] Section 201 establishes the Commission's obligation to require interconnection between common carriers, and is made specifically applicable to CMRS by Section 332(c), which classifies CMRS providers as common carriers subject to certain Title II regulation.[60] The Commission's proposal to regulate, and preempt state regulation of, the rates of CMRS interconnection is encompassed by Sections 201 and 332 and is therefore undisturbed by the Telecom Act.

Second, the Commission is *obligated* under Section 332 to preempt state regulation of interconnection.[61] Section 332 prevents any state from regulating the entry or rates of any CMRS provider.[62] The proposals in the rulemaking, particularly bill and keep, affect the expenses of interconnection for CMRS providers, and, inevitability, the rates charged to subscribers, and will lower the barriers to market entry by new providers. State regulators should not be allowed to frustrate these policies and engage in back-door rate and entry regulation.

Third, the Commission's previous decision to allow states to regulate "intrastate" interconnection rates is no longer applicable;[63] the Commission now has ample evidence that CMRS service is not segregable into inter- and intrastate elements.[64] In

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59. *See Notice* at ¶ 111.

60. 47 U.S.C. § 332(c)(3).

61. *Id.*

62. Id.

63. *See CMRS Second Report*, 9 FCC Rcd at 1498.

64. The holding in *Louisiana PSC* therefore does not preclude federal preemption of LEC-CMRS interconnection. *Cf. Louisiana Public Service Commission v. FCC,* 476 U.S. 355, 375 (1986).

particular, interconnection between CMRS and LECs cannot be segregated into interstate and intrastate functions. Most CMRS systems, particularly the BTAs and MTAs to be implemented for PCS, are or will be operated as single entities without regard to state boundaries. Vanguard's Huntington-Ashland, WV/KY/OH MSA, for example, covers three states. A call placed by a mobile user in the Ohio portion of Vanguard's cellular system to a landline subscriber is interconnected at the same MTSO as a call from a mobile user in West Virginia. It is not even clear when to classify a call as interstate or intrastate. For example, a mobile user in Ohio, just across the Ohio River, can place a call that is picked up by a cell site in West Virginia, which sends the call to the MTSO in West Virginia to interconnect with the landline. Because the cell site does not determine the exact location of the mobile user, Vanguard's system would classify this call as intrastate, even though it is actually an interstate call.

Inconsistent state regulation of interconnection compensation, which is bound to occur if the Commission does not adopt specific federal rules,[65] would make accounting and billing "a nightmare" for companies like Vanguard.[66] Vanguard would require an entirely new department just to perform the required billing operations, assuming it could somehow track a call's origin and destination for purposes of each state's interconnection compensation regulation.

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65. Given the history of vastly disparate regulation of cellular rates by state PUCs prior to federal preemption, inconsistent interconnection compensation regulation could be expected.

66. *See* Kiernan Dec. at ¶ 16.

The burden of complying with new state regulations, added to already significant state requirements,[67] would preclude effective implementation of the federal policies contained in Sections 201 and 332. Comprehensive federal regulation of interconnection compensation, as proposed in the *Notice*, is a necessity, if the Commission is to preserve and foster a ubiquitous national communications network available at reasonable cost to all Americans.

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67. For instance, Vanguard is currently required to pay separate state taxes on revenue generated in Ohio, Kentucky, and West Virginia, even though it does not as a matter of business practice account for revenue in the Huntington-Ashland MSA in this manner. Vanguard also pays annual PUC fees, including a $30,000 annual fee to the West Virginia PUC.

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC

Compensation for IXC-CMRS interconnection is a tale of two markets. When Vanguard connects directly with the IXC, as it does on outbound long distance calls, the competitive IXC market allows Vanguard to negotiate a reasonable interconnection fee.[68] On the other hand, where a LEC connects the IXC to Vanguard, as currently occurs with incoming long distance calls, the LEC retains all compensation received from the IXC, passing none of the access charges on to Vanguard.[69] Because direct IXC to CMRS interconnection may soon be possible for both incoming and outgoing calls, the Commission should adopt a simple interim rule for compensating CMRS providers for terminating IXC calls carried through the LEC.

Specifically, the LEC should pay CMRS providers the same compensation for terminating IXC calls as it pays to neighboring LECs. LEC-to-LEC compensation for IXC-originated calls presumably approximates the level of compensation in a competitive market, because, while these markets are not competitive, the carriers at least have relatively equal bargaining power. In order to guarantee that CMRS providers receive this rate, LECs should be required to file contracts with the states containing the rates, terms and conditions of LEC to LEC compensation for terminating IXC calls. LECs should also be required to

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68. In Vanguard's experience, the Commission's description of cellular-IXC interconnection is therefore inaccurate. *See Notice* at ¶ 115.

69. When Vanguard is able to connect directly with the IXC, it will be able to use fewer transport facilities from the LEC, resulting in a substantial savings. Kiernan Dec. at ¶ 5.

offer CMRS providers the same rates, terms and conditions as are offered to neighboring LECs. Moreover, since many CMRS providers (including Vanguard) are not now able to measure the amount of incoming traffic or its origin, LECs should be required to file a report with the state certifying the number of minutes of IXC calls it has connected to each CMRS provider.

On the other hand, there is no justification for regulating the rates, terms and conditions of direct connections between CMRS and IXCs, as both markets are competitive and rates are equitable.[70] The Commission should continue its policy of forebearing from regulating CMRS providers' interstate access charges.[71]

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70. *See Notice* at ¶ 117.

71. *See CMRS Second Report,* 9 FCC Rcd. at 1478-81.

IV. APPLICATION OF THESE PROPOSALS

The Commission should apply the rules it adopts for LEC-CMRS interconnection to *all* CMRS providers. Limiting these regulations to one segment of CMRS is shortsighted and inconsistent with the Commission's policy of regulatory parity. Section 6002(b) of the Budget Act requires the FCC to establish consistent regulatory classifications, and the Commission has adopted a policy of regulatory parity.[72] The *Notice* offers no justification for discriminating among CMRS providers in this context.[73]

The first proposal, to limit the new interconnection rules to broadband PCS providers, ignores the current pervasive problems in CMRS-LEC interconnection.[74] Such a limitation would be arbitrary in the extreme. While the implementation of PCS should not be hampered by barriers to market entry, neither should the growth and expansion of cellular and other existing CMRS services be stymied by an outdated and anticompetitive interconnection regime.

The second proposal, limiting the new interconnection rules to CMRS providers that support voice telecommunications, is contrary to the Commission's policy of refusing to distinguish between CMRS providers in terms of a LEC's obligation to offer

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72. *See CMRS Second Report,* 9 FCC Rcd 1411 (1994)

73. *See Notice* at ¶¶ 118-121.

74. *Id.* at ¶ 119.

interconnection.[75] While voice telecommunications are the services most likely to compete with LECs in the local loop, this alone does not justify disparate treatment of CMRS providers.[76] First, competition in the local loop is not the sole justification for the Commission's interconnection compensation proposals.[77] Second, excluding non-voice communications from the FCC's interconnection rules may be shortsighted, given the consolidation of functions already occurring in the CMRS industry. For example, paging operators now offer two-way communications, while PCS carriers such as Sprint Spectrum feature paging with their phone services.

The Commission should therefore adopt its third proposal, and apply its new interconnection rules broadly and consistently to all CMRS providers. Consistent regulation among similarly-situated mobile communications providers will promote competition and growth in the industry.

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75. *CMRS Second Report* at 1497 ("We see no distinction between a LEC's obligation to offer interconnection to Part 22 licensees and all other CMRS providers").

76. *Notice* at ¶ 120.

77. *Id.* at ¶ 12 (noting that LEC may abuse market power to gain monopoly rents as well as exclude competitors from local loop market).

V. OTHER

The historical and market conditions that exist between CMRS providers and incumbent LECs are *sui generis,* and require unique solutions. While similar conditions may exist in other markets, each area of the telecommunications infrastructure must be analyzed separately in order to determine the most appropriate regulatory regime. In particular, the relationship of CMRS carriers and the LECs as co-carriers in the provision of exchange services does not extend to the IXCs, which are considered users of the local exchange. For this reason, the Commission should examine the relationship between IXCs and LECs without reference to this proceeding; in other words, the implementation of bill and keep as the compensation model for CMRS-LEC interconnection should not affect the outcome of the upcoming proceeding examining LEC-IXC access charges.[78]

78. *Id.* at ¶ 77 ("there may be significant reasons . . . that may necessitate differences in regulatory regimes").

VI. CONCLUSION

Given the current market conditions, where LEC's are able to dictate the terms and rates of interconnection with CMRS providers, regulatory intervention is required. Bill and keep is simply the most fair and least complicated and intrusive means of ensuring reasonable interconnection rates. The Commission should also ensure that LECs are not able to recover more than the allocable cost of fixed transport facilities from CMRS providers. The FCC's interconnection rules should expressly preempt state regulation, as it would only interfere with the implementation of the federal inconnection policies. Finally, these rules should be applied to all CMRS providers to provide for a level playing field on both the CMRS and local loop marketplaces.

March 4, 1996

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By: James F. Rogers

James F. Rogers
Steven H. Schulman
of LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004
Its Attorneys

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EXHIBIT A

DECLARATION OF SANDY KIERNAN

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Declaration of Sandy Kiernan

DECLARATION OF SANDY KIERNAN

1. I, Sandy Kiernan, am the Carrier Relations Manager of Vanguard Cellular Systems, Inc., headquartered in Greensboro, N.C. I have worked at Vanguard since 1993. Part of my job is to assist in negotiations with Interexchange Carriers ("IXCs") and with local exchange carriers ("LECs") for interconnection arrangements.

<u>Negotiation With IXCs vs. Negotiation With LECs,</u>

<u>Preparation</u>

2. In preparing for negotiations with the IXC's, we draft a Request for Proposal (RFP). A RFP is sent to each competitor with which are were familiar. This helps to unify the responses so that the analyses are based on the same criteria. It also gives them a snapshot of our current facilities and how they interact. We request their offerings for our network including the opportunity to offer products or services that may be unique to their company. Since there is currently only one LEC (Local Exchange Carrier) per market, a RFP would not serve the same purpose.

<u>Negotiation</u>

3. By being able to negotiate a contract, it helps us to gather critical information before awarding our business to any one vendor. Negotiations also allow vendors to suggest new ideas and approaches based on our needs that were previously not considered. For instance, Vanguard used to be on a different long distance platform than we are today. Through the RFP process, we chose to be on a software defined network. This allows us to take advantage of several services via the same trunk lines we have in place today. Our previous platform would have required us to install a different trunk for each service. By

receiving this offer from a vendor it allowed us to become aware of other alternatives for our network. The RFP and negotiation process enhances this type of competitive analysis.

4. After we receive the responses from an IXC on the RFP, we can do an analysis to determine what each competitor has offered on pricing. Next we evaluate the responses for additional value and repair responsiveness. We also look at their billing methods and format. The ease of administrative interface with a vendor is an important area as related to information processing and technology. All of these items are negotiable and we can request counter offers if any of them are not satisfactory.

5. Following is another example of how we can negotiate better rates with the IXC's. Today we use dedicated trunks to send outgoing long distance traffic directly to the IXC. This allows us to bypass the local exchange carrier and receive a better rate from the IXC. We are currently working on a plan to use our dedicated trunks for incoming long distance traffic and again bypass the LEC. The IXC will give us a 40% discount on the local loop portion of these trunks. They are able to do this because they do not have to pay the LEC to carry the traffic. (The LEC also does not add any value to traffic offered to Vanguard.)

6. The negotiations with the LEC are very limited. Our account manager will typically make us aware of any contractual discounts that are being offered. In some cases we get most favored nation. However, these are almost impossible to verify because we do not see other companies' contracts. We can then either agree to the terms offered to receive the discount or not. We have never been able to negotiate a counter offer for greater savings. It is also unlikely that we can change any of the specified criteria to better fit our

needs or our customers needs. When we do request discounts, we are told that the tariff offerings are all that are available.

Pricing

7. The IXC's being considered for service will offer an initial price on their RFP response. This price can be negotiated up to the point where either party accepts or rejects it. We can negotiate additional discounts with the IXC when our volume exceeds our initial commitment. The IXC can also file for special tariffs customized to our company.

8. The LEC states that its pricing is based on the cost. However, they will not make cost studies available to us. Because the LEC is a monopoly, they are regulated by tariffs. They cannot file for special tariffs based on a particular customer profile. Today, we receive price discounts from the LEC based on term commitments. We all recognize that there are economies of scale that should lower pricing based on volume. The LECs do not adhere to this fundamental concept.

Service

9. Service is a major concern for our company. We look closely at the IXC record for downtime and repair time when we look at the overall package. The reliability of the network can override pricing. Their service record is a critical factor in our carrier of choice.

10. We are just as concerned about our service with the LEC. However, we are limited in our choices if the LEC in our market has poor service. We do work with some LEC's that offer poor service today. Our options in these situations are to install redundant circuits or use our microwave network to backup the LEC circuits. Both of these options increase our network cost.

11. Another issue with service is the account team we are assigned. With the IXC, we have negotiating power due to the competition that exists. We have the opportunity to request a dedicated account team to work on our account. At the LEC level, our account team is initially at the discretion of the LEC. If we experience poor support from our Account Manager we can complain to their management. This does not ensure that our account team will be changed. We do not have the same negotiating power with the LEC, because we do not have the option of taking our business elsewhere.

12. When an outage to service does occur, it is very important to us how expediently the IXC or LEC conduct repairs. The IXC has more incentive to expediently repair service that the LEC has, due to the competitive nature of their business. As a cellular carrier we have the same pressures to have reliable service, since we will lose customers based on this issue. The LEC however does not have to worry about losing customers due to service outages, since currently there is no competition. In 1995, out of all telco related outages, 5% were due to IXC problems and 95% were due to the LEC.

<u>Billing</u>

13. The IXC can provide our billing in various formats. We can obtain it on paper, CD-ROM, or download it via a direct connection. We find the CD-Rom billing very useful because we conduct analysis on the traffic. The CD-Rom bill gives us detailed call information in a manageable format. If we were to receive this type of bill in paper format, it would come in at least four (4) large Boxes. It would also be impossible to analyze.

14. I have requested the CD-Rom billing format from the LECs. Only one has been able to provide the service, Nynex. Still, they only provide it for their type 2 circuits, but not our other services. We have been unable to get this billing format from any other

LEC. The IXC's are much quicker to develop these types of services because of the competitive environment in which they operate.

Summary

15. In summary, we have very little leverage in working with the LEC's compared the IXC's. By having and exercising this leverage with the IXC's, we have been able to substantially reduce our overall cost, while significantly improving our service levels.

The Problems With Multi-State Jurisdiction

16. If each state had different interconnection compensation rules, it would be a billing nightmare to try to recoup compensation differently from each LEC. It may be impossible to do so in a multi-state market like the Huntington-Ashland, WV/KY/OH MSA. We would have to spend a lot of time, expense and expertise to establish billing for just one method of reciprocal compensation. Furthermore, Vanguard would need a new department just to administer this type of billing on an ongoing basis.

I declare, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge. Executed this 1 day of March, 1996, at Greensboro, N.C.

Sandy Kiernan

Sandy Kiernan
Carrier Relations Manager
Vanguard Cellular Systems, Inc.